XI-HC-22

(30)

उच्च न्यायालय, छत्तीसगढ. बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 2524 of 1998

APPELLANT (In Jail) — Jethu Ram S/o Anand @ Sant Ram Lohar, aged about 20 years, R/o Gahod, P.S. Palori, Distt. Raipur .M.P.

VERSUS

RESPONDENT — The State of M.P.

Present:

Mrs. Usha Chandrakar, counsel for the appellant.

Mr. Neeraj Mehta, P.L. for the State/respondent.

JUDGMENT

(11th October 2007)

Dhirendra Mishra, J.

This criminal appeal is directed against the judgment of conviction and order of sentence dated 17.6.1998 passed in S.T. No. 457/97 whereby learned Additional Sessions Judge, Baloda Bazar, District Raipur, has convicted the appellant under Sections 376 (1) of the Indian Penal Code and sentenced him to undergo RI for seven years, pay a fine of Rs.2,000/- and in default of payment of fine to undergo additional RI for one year.

2. Case of the prosecution, in brief, is that the prosecutrix is a married lady, aged 46 years. She is a mentally handicapped lady and because of this she was deserted by her in-laws and since then she is residing with the complainant,

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her father Tukaram (PW-3). She goes for collection of cow dung. Since 4-5 months before lodging of the report of Ex.P/4 she had gone to collect cow dung when the accused forcibly raped her. However, she did not disclose this incident to her parents. But when her pregnancy became obvious, on enquiry she narrated the incident to her parents, whereupon written report of Ex.P/3 was lodged by Tukaram (PW-3) in Police Station – Palari, Distt. Raipur

3. During investigation the prosecutrix was sent for medical examination to Primary Health Centre, Palari where Dr. Rama Tiwari (PW-1) examined her and gave her report of Ex.P/1. After completing investigation charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Baloda Bazar and the same was received by learned Additional Sessions Judge for trial.

4. During trial the prosecution examined 8 witnesses. Thereafter, statement of the accused was recorded wherein he pleaded innocence and false implication and stated that complainant Tukaram has planted plants in front of his field and thereby obstructed his way and because of this, a false report has been lodged against him. However, learned trial Court after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment.

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5. Conviction of the appellant is based on the statement of the prosecutrix as the complainant, father of the prosecutrix, and other villagers have not supported case of the prosecution and they have turned hostile.

6. Learned counsel for the appellant submits that there is no evidence available on record to show that the prosecutrix was a mentally challenged lady except the statement of her father Tukaram, who has not supported the prosecution case and has been turned hostile. She further argued that from perusal of statement of the prosecutrix, it would be evident that she has deposed before the Court with reasoning and answered the questions put to her in cross-examination after understanding the same. She further argued that the prosecutrix kept quiet for a period of five months and did not disclose about the incident to anyone, which is suggestive of the fact that she was a consenting party and the report was lodged only after she became pregnant. Referring to paragraph 4 of her statement it is argued that after the accused threw her on the floor, she remained seated while he was undressing her and did not make any effort to flee from the place of incident, which also shows that it's a case of consensual intercourse.

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7. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court.

8. I have heard learned counsel for both the parties and have perused the impugned judgment as also the evidence available on record.

9. Dr. Rama Tiwari (PW-1) has examined the prosecutrix on 29th September 1997 and gave her report of Ex.P/1. She has stated that at the time of examination, the prosecutrix was carrying pregnancy of 30-32 weeks. Thus, if we go by the report of Ex.P/1, in that case the report was lodged more than seven months after the incident. She has also stated that on examination she found the prosecutrix to be mentally normal and did not notice any injury over her person.

10. The prosecutrix (PW-6) has stated that everyday she used to go to collect cow dung. The accused caught her hand, threw her on the ground and thereafter, mounted on her, as a result of which she conceived and gave birth to a daughter. She did not disclose this fact to her family members or anybody in the village. In the cross-examination she has stated that the incident occurred during harvesting season of paddy when the accused was grazing his cattle. In paragraph 4 of her statement she has stated that when the accused caught her,

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she had shouted and resisted the attempt. While the accused was undressing her, she was quietly sitting before him and did not try to run away from there.

11. PW-3 Tukaram is the complainant and father of the prosecutrix. He has stated that the prosecutrix was married 18-19 years before. However, she was deserted by her in-laws as her mental condition is not normal and she is of weak mind. He has further stated that the prosecutrix did not tell them as to who is responsible for her pregnancy. In cross-examination also he has denied the contents of Ex.P/3 and stated that he never submitted such application to the police station. Though he admitted his signature on the First Information Report from 'A' to 'A' of Ex.P/4 but denied its contents.

12. The only question for consideration in this appeal is – whether on the basis of material available on record the trial Court was justified in convicting the appellant by placing implicit reliance on the solitary testimony of the prosecutrix?

13. Case of the prosecution is that the prosecutrix is a mentally challenged lady and therefore, she did not disclose about the incident to her parents or anybody else in the village and disclosed only after her pregnancy was revealed by her physical appearance. However, the prosecution has not collected any evidence in the form of report of any psychiatrist

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or psychologist to establish the fact that the prosecutrix was a mentally retarded lady. On the contrary, Dr. Rama Tiwari who examined the prosecutrix, has stated that her mental condition was normal. Even otherwise, looking to the manner in which she has answered in her cross-examination, it can not be inferred that she was a mentally retarded lady. In the absence of any reliable or cogent evidence regarding her being a mental handicapped, her conduct in not disclosing the fact of rape to her parents or other villagers for a period of 4-5 months or precisely 7 months, is fatal to the prosecution case. In these circumstances, this Court is of the considered opinion that the Court below ought not to have acted upon the solitary testimony of the prosecutrix without looking for any corroboration.

14. On the basis of aforesaid discussions, impugned judgment of the trial Court convicting and sentencing the appellant under Sections 376(1) of the IPC deserves to be set aside and is accordingly, set aside. The appeal preferred by the appellant is allowed. He is acquitted of the above charges. He be set at liberty forthwith, if not required in any other case.

Sd/-
Dhirendra Mishra
Judge